

choices about how to spend appropriated dollars, but will hopefully take some of the politics out of the spending process. I hope we will move in this direction in the future.

Again, although I intend to vote against this bill, I want to thank the bill's managers, especially the chairman of the subcommittee, Senator HATFIELD.●

PRIVATE GAMBLING AND PUBLIC MORALITY

● Mr. SIMON. Mr. President, Prof. George Anastaplo of Loyola University School of Law in Chicago recently spoke at a convention in Las Vegas, commenting about legalized gambling and where we are going as a nation.

It is a thoughtful presentation that I am appending at the end of these remarks. I have condensed his original paper somewhat.

What is interesting to me particularly is to read a quotation from an 1850 U.S. Supreme Court decision, *Phelan versus Virginia*, in which the Court comments on lotteries as compared to private gambling. The Court said:

The suppression of nuisances injurious to public health or morality is among the most important duties of government. Experience has shown common forms of gambling are comparatively innocuous when placed in contrast with the widespread pestilence of lotteries. The former are confined to a few persons and places, but the latter infests the whole community: it enters every dwelling; it reaches every class; it preys upon the hard earnings of the poor; it plunders the ignorant and simple.

Mr. President, I ask that the condensed version of Mr. Anastaplo's remarks be printed in the RECORD.

The condensed version follows:

"PRIVATE" GAMBLING AND PUBLIC MORALITY (By George Anastaplo)

Gambling is in evidence all around us. For example, Texas bingo halls took in \$63,000,000 in 1994. The pervasiveness of gambling is evident to anyone who follows sports: the "point spread" helps make each encounter of even mismatched opponents "interesting" and hence the occasion for wagering. Officials of professional leagues used to worry about the influence of gambling. For example, it was once argued, "The values of football are hard work, disappointment, and honest competition, which must exist in an honest environment." Gambling, it was feared, would "accentuate" the pressures on football players beyond a tolerable point, and change a sporting event into a gambling spectacle. Now, the officials of professional leagues cooperate with the gambling industry to make sure that games are not "fixed."

But, it can be noticed, the sports contests that are gambled upon may often be intrinsically interesting—and can attract attention without any organized wagering. But lotteries, slot machines, and the like are far less interesting in themselves. Even so, they can be quite entertaining, even thrilling, for participants. Thus, it has been observed, "Unlike narcotics, which creates droves of criminals who prey on the generally poor black community, the numbers game seems to many people to be just a potent, daily titillation for poor people seeking a rainbow's end." The head of an off track betting cor-

poration, upon being accused of taking money from the poor, asked rather rhetorically, "Who's to say what's gambling and what's entertainment?" But then, nicotine, too, can be engaging for the addict, however deadly cigarette-smoking may be.

We tend to be much more relaxed, as a community, about the damage done by gambling than were some of the earlier generations in this country. Tolerance for lotteries, in the first quarter of the Nineteenth Century gave way, because of growing abuses, to efforts by state governments to put lotteries out of business. In 1895 Congress provided support for these states with its own legislation, "An Act for the Suppression of Lottery Traffic through National and Interstate Commerce and Postal Service, Subject to the Jurisdiction and Laws of the United States."

A constitutional inquiry into what was indeed "subject to the jurisdiction and laws of the United States" elicited this question from the United States Supreme Court in *Champion v. Ames*: (The Lottery Case), 188 U.S. 121, at 356 (1903):

"If a state, when considering legislation for the suppression of lotteries within its own limits, may properly take into view the evils that inhere in the raising of money, in that mode, why may not Congress, invested with the power to regulate commerce among the several states, provide that such commerce shall not be polluted by the carrying of lottery tickets from one state to another?"

Further on the Court argued (*ibid.*, at 357-58):

"[B]ut surely it will not be said to be a part of anyone's liberty, as recognized by the supreme law of the land, that he shall be allowed to introduce into commerce among the states an element that will be confessedly injurious to the public morals. . . . We should hesitate long before adjudging that an evil of such appalling character, carried on through interstate commerce, cannot be met and crushed by the only power competent to that end."

It is evident how people in authority in the first decade of this century were expected to speak about such gambling as the lottery. The dissenting opinion in *Champion v. Ames* made no defense of lotteries, arguing instead that the power to suppress such "a harmful business" belong to the states, not to the national government.

The majority of the Supreme Court in *Champion v. Ames* insisted that Congress should be able to act:

"... to protect the country at large against a species of interstate commerce which, although in general use and somewhat favored in both national and state legislation in the early history of the country, has grown into disrepute, and has become offensive to the entire people of the nation. It is a kind of traffic that no one can be entitled to pursue as a right."

I mention in passing the likelihood that the current indulgences in lotteries and the like will, because of emerging abuses and harmful consequences, eventually be subjected once again to severe restrictions. In fact, it is already likely that lotteries would not be approved in many of the states where they now operate, if put to a popular vote by referendum.

No one on the 1903 Court doubted that state governments could try to suppress lotteries if they wished. *Phelan v. Virginia*, 8 Howard (49 U.S.) 162 (1850) was cited to this effect. The opinion in that case, upholding an 1834 act of Virginia forbidding the sale of lottery tickets, includes this reminder of how lotteries were once regarded in this country:

"The suppression of nuisances injurious to public health or morality is among the most

important duties of government. Experience has shown that the common forms of gambling are comparatively innocuous when placed in contrast with the widespread pestilence of lotteries. The former are confined to a few persons and places, but the latter infests the whole community: it enters every dwelling; it reaches every class; it preys upon the hard earnings of the poor; it plunders the ignorant and simple."

This, then, is the sort of public opinion, running back to 1850 and earlier, that the Supreme Court could invoke in the opening years of this century. Now, at the end of the same century, not only are lotteries no longer spoken of in this fashion by officials, but the states of this Union are themselves in the business of running and vigorously promoting lotteries with ever-growing prizes. In Illinois, for example, the gambling industry contributed more than a million dollars to political candidates in 1995. Furthermore, it has been able to hire a former governor of the state and other former Illinois officials as paid lobbyists.

This is not just an American phenomenon, of course. State lotteries are very much in evidence in Europe and elsewhere. The "pools" have long been a feature of British life. And something is to be said for legalizing (or at least decriminalizing) what is likely to be done anyway, thereby permitting both regulation and taxation. But is not the state's doing it, and promoting it, something significantly different from toleration, taxation and regulation? Is it as if the state had gotten into the business of producing and selling firearms, prostitutes, alcoholic beverages, cigarettes, and other narcotics?

The newest gambling rage in this country, however, is not lotteries but rather casinos. These are licensed by states which count on a hefty cut of the revenues. Respectable newspapers prod their legislatures to take measures to counter the competition from the casinos in neighboring states. Consider, for example, the opening and closing sentences of a recent Chicago Sun-Times editorial ("Casino Shutdown in East Dubuque, Illinois Forces Gambling Issue," December 7, 1995):

"Two Illinois riverboat casino got no satisfaction from the Legislature last month when they asked for help in competing with Iowa boats across the Mississippi River. . . . While the Legislature fiddles, Illinois gaming revenue floats across the Mississippi to lucky Iowa."

It is the practice of the gambling industry, by the way, to refer to the "entertainment" it offers as "gaming," not as "gambling."

A recent Chicago Tribune editorial, supporting an effort to exact more revenues from riverboat casinos, begins with these observations ("Bet on Edgar's casino tax plan," March 8, 1996):

"Who says gambling doesn't pay?

"Last year the Empress Casino in Joliet hauled in \$200 million, after paying off bettors. For Harrah's, also in Joliet, the figure was more than \$190 million.

"Gov. Jim Edgar's proposed 1997 state budget would impose on those and other high-rolling casinos a graduated tax to tap some of the windfall for the state's schools—and rightly so.

"Under current law, all casinos are taxed a flat 20 percent of their adjusted gross receipts (that's what they have left after they've paid out winnings), regardless of how much money they're making.

"For a struggling operation (and there are some), 20 percent is too much; for the widely successful ones, it's a bargain, and for the state it's an inefficient approach to taxation of this protected industry."

Immediately following this Tribune editorial about how the state should take further advantage of "this protected industry" is an

editorial, "No more cosying up to gangsters," commenting upon the conviction of eight members of a gang for distributing narcotics in Chicago and the suburbs. There is much to be said, of course, for the decriminalization of drug sales in this country, just as there has been for the decriminalization of gambling. But "cosying up" to, and relying upon, such activities, and even promoting them for their revenues pose questions that we seem to have lost sight of about the role of law in sustaining morality.

Far from encouraging morality, we find ourselves catering to vices and trying to exploit them. To some extent, as we have noticed, gambling is a form of self-chosen entertainment less harmful in many ways than some other forms of entertainment. It tends to be for most of the "players" more self-correcting than several other forms of self-abuse, such as alcohol and drug addiction.

But this sort of entertainment is not intrinsically satisfying, requiring as it does constant intensification in order to maintain its interest for participants. Thus, it has been noticed by a Haverhill, Massachusetts newspaper ("Opinionline," USA-Today, November 13, 1995, p. 13A):

"We've gone from the Sweepstakes era, with a once-a-week, 50-cents-per-ticket drawing, to state-run and fostered gambling industry which is worth millions. The state government is addicted to gambling, as government finds ways to avoid dealing with the issues of how much money it should spend and what tax it ought to levy. But something is drastically wrong when government becomes increasingly dependent on the misfortunes of its people to finance its operations."

There is something "realistic" in recognizing that people will gamble, however much government attempts to suppress it. The considerable lure of gambling, sometimes with catastrophic consequences, has long been known. But what seems to be forgotten from time to time is the price paid, even in economic terms, for widespread gambling. The next decade should see the publication of more and more studies which expose to public view the hidden costs of the revenues that are derived from the gambling industry. These include the effects upon small businesses as large sums of money are siphoned out of the community by casinos. These hidden costs include, as well, the social services that have to be provided the families that are victims of gambling addictions. (The University of Chicago library has extensive entries under the catalogue heading: "Addictive disorders update: alcoholism, drug abuse, gambling.")

Even more important than the economic and social costs of intensified addiction is what has been happening (but not only because of the gambling industry) to the authoritative opinions of the community. Hedonism is encouraged along with the notion of getting "something for nothing." Self-centeredness is thereby legitimated, as may be seen in the growing scandal of the level of compensation these days for the chief executive officers of our major corporations (especially when their compensation is compared to that of their equally successful European and Japanese counterparts). It sometimes seems that shamelessness has become the order of the day. . . . A billboard recently on display in Chicago invited us to a Wisconsin Dells casino with the slogan, "Come to the Land of Milk and Money." (This advertisement was illustrated by the drawing of a slot-machine showing three cows lined up: a real winner!) That, we are thus told, is the new Promised Land.

The public should be encouraged in these matters to face up to two sets of delusions. This can help us face up in turn to what we are doing and how best to accommodate our-

selves to the vices that human beings are bound to have.

The first set of delusions has to do with what organized gambling depends upon: the systematic fleecing of the ignorant by the informed. Professional gamblers do not believe in gambling any more than professional panderers believe in love: gambling magnates are no more gamblers than casino riverboats are boats. The huge outlays that casino operators are willing to devote to securing licenses reveal what a treasure-trove the well-placed casino must be. The sooner that casino customers recognize that they are suckers, the sooner most of them are likely to entertain themselves some other way.

The second set of delusions has to do with the notion that revenues derived from the gambling industry are a painless substitute for the taxation required for schools and other essential community services. Thus, it can be said that "money raised through legalized gambling is one of the few forms of taxation that people voluntarily and cheerfully pay." (Geis, *Not the Law's Business?*, p. 237) But for an action to be truly voluntary a minimum of understanding is required. Consider, for example, these observations ("Take a Hard Look at Costs of Gambling," *Chicago Sun-Times*, September 28, 1955:

"Some \$330 billion was wagered legally in 1992, up 1,800 percent from 1976. In Mississippi last year, gamblers wagered \$29.7 billion, whole total retail sales were only \$27.6 billion. Since casinos opened in Atlantic City in 1978, 100 of the 250 restaurants have closed, as have all the movie theaters."

"Despite evidence that gambling may not be the panacea once thought, legislators continue to legalize gambling as a way to bring money into state coffers. But what are its costs long-term?"

The need for reliable information here, to which I have already referred, may well be served by the current efforts in Congress, by Senator Paul Simon and others, to investigate gambling in this country. The thesis to be tested is that offered last year by a syndicated columnist (William Safire, "New Evil Empire," *New York Times*, September 28, 1995, p. A17):

"Gambling is a [massive] industry that is inherently immoral, corrupting public officials, enriching criminals, addicting and impoverishing the young and vulnerable."

"But the gambling racket—whether in state-licensed casino, state-sponsored lotteries or on glitzy reservations of phony Indian tribes—has been promoted by public officials as a great way of painlessly raising revenues, with state voters acting as suckers. As a result officially endorsed and government-advertised gambling now has America by the throat."

A report from Deadwood, South Dakota sums up the suicidal course we have followed in our delusions. A woman who has supported the effort to legalize casinos in 1989 is now appalled upon seeing that the casinos "have all but wiped out [her] town's retailers" (James Sterngold, "Spread of Gambling Prompts Calls for Federal Study of It," *New York Times*, November 24, 1995, emphasis added):

"Strolling past storefront casinos that have replaced everything from the state social services office to the insurance broker and department store, [she] commented, 'I'm homesick all the time and I never left home. We were completely unrealistic.'"

Perhaps the most troublesome feature of all this may be that we have drifted into a much-changed way of life without much serious study or deliberate choice.

This paper was prepared for the Law Panels at the American Culture Association Convention, Las Vegas, Nevada, March 25,

1996. George Anastaplo is Professor of Law at Loyola University of Chicago. •

THE FORMATION OF THE FINANCIAL INSTITUTION MODERNIZATION WORKING GROUP

• Mr. GRAMS. Mr. President, I rise today to discuss something that probably has not been debated much in the Senate since this body considered the FDIC Improvement Act back in 1991. I want to talk about the need to modernize the outdated laws that govern America's financial services industry.

The vital role that financial services play in our daily lives cannot be understated. We take out loans to go to college, to buy a car, and to purchase a home. We buy insurance to provide greater security to ourselves and our families. We make investments throughout our life so that we may retire in comfort and dignity.

Today, technological advancements and increased innovation in the delivery of financial services make it easier than ever for consumers to get loans, purchase insurance, and invest their earnings. Unfortunately, our archaic and burdensome laws governing financial institutions continue to discourage, rather than encourage, such advancement and innovation.

The laws to which I am referring are not those governing the safety and soundness of financial institutions, such as setting minimum capital requirements or requiring periodic oversight by Federal or State regulators. Safety and soundness laws and regulations are beneficial and necessary, as they enhance the security of the consumer whenever he or she deposits money in a bank or purchases an insurance policy.

The outdated laws that I am referring to are the laws that create barriers to competition by artificially compartmentalizing the three major sectors of financial services—banking, securities, and insurance. For example, under the Banking Act of 1933, more commonly known as the Glass-Steagall Act, banks are generally barred from directly investing in corporate securities, underwriting new corporate issues, or sponsoring mutual funds. Under the Bank Holding Company Act of 1956, securities underwriters, insurance underwriters, and nonfinancial companies are generally prohibited from owning banks or being owned by a bank holding company.

These outdated financial institution laws hurt consumers by artificially increasing the costs of financial services, reducing the availability of financial products, and reducing the level of convenience in the delivery of financial services. These outdated laws hurt small businesses—an engine of job growth in the American economy—by artificially limiting the amount of equity capital available for expanded activity. And finally, these outdated laws weaken the international competitiveness of America's financial institutions